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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/697,262	10/26/2000	Dirk Daecke	P00,1843	3837

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SCHIFF, HARDIN & WAITE
Patent Department
6600 Sears Tower- 233 South Wacker Drive
Chicago, IL 60606

EXAMINER

ELALLAM, AHMED

ART UNIT	PAPER NUMBER
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2662

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/697,262

Applicant(s)

DAECKE ET AL.

Examiner

AHMED ELALLAM

Art Unit

2662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This communication is in response to amendment filed on August 9, 2004. The amendment has been entered.

Claims 1-14 and 16 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1, 3-14 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding independent claims 1, 4 and 16, the specification as originally filed doesn't describe the limitation of "transfer rate formed dependent on the frame length and number of bits arranged in the frame" as in claims 1, and 16, and "a transfer rate formed dependent on a frame length and number of bits arranged in the frame".

Claims 3, 5-14 depends from rejected independent claims 1, 4 and 16, thus they are subject to the same rejection.

The new matter should be deleted in next office action.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 2 is rejected under 35 U.S.C. 102(e) as being anticipated by Bartholomew et al, US (6,400,708).

Regarding claim 2, with reference to figures 1-3, Bartholomew discloses a circuit arrangement (Fig. 2) comprising:

- channel bank 31 for dividing a data stream transmitted in a frame by a multiplexer 81 (Fig. 2) to a terminal equipment 29, 25, (claimed a reception unit for dividing a data stream transmitted in a frame by a transmitter to at least one terminal equipment);
- the channel bank comprising a Multiplexer/Demultiplexer 75 (claimed switch module) for demultiplexing the data stream received to its destined terminal equipment (29, 25), wherein the EOC (embedded operations channel) is used for control (claimed control data); see column 11, lines 63-67; column 12, lines 1-19, lines 60-67 and column 13, lines 1-31. (Claimed a switch module for a purpose-conforming division of data stream, in which a further division onto further terminal equipment type is undertaken based on control data).

Response to Arguments

3. Applicant's arguments filed August 9, 2004 have been fully considered but they are not persuasive.

The objection to claim 15 is withdrawn in view of the cancellation of the claim.

The rejection under 112 second Paragraph is withdrawn in view of the amendment to claims 1, 3 and 14.

Applicants argue that: *"Bartholomew fails to teach each and every element of the independent claims, as amended, in that it only discloses a fixed data transfer rate between a subscriber and a central office and not the variable data transfer rate as added by the amendments."* (Italics added).

The amendment to independent claims 1, 4 and the new claim 16, have introduced new subject matter, which consist of *"a transfer rate formed dependent on the frame length and number of bits arranged in the frame"*. Arguing the pertinence of Bartholomew as prior art is irrelevant as far as the new subject matter is concerned.

Applicant similarly stated on page 6 of the argument that:

"The subject matter of the invention, with claims as amended, concerns providing a variable number of multiple services (POTS, ISDN services and broadband) over a 2-wire subscriber connection line in an SDSL frame structure which is conveyed to the central office in which a transfer rate is based on the frame length and number of bits arranged in the frame".

With disregard to the new subject matter, and In contrast to Applicants assertion, none of the claims have the *"variable number of multiple services (POTS, ISDN*

services and broadband) over a 2-wire subscriber connection line in an SDSL frame structure which is conveyed to the central office". With the exception of claim 6, that recites the connections as being one of telephony or isdn or broadband.

Applicants argument as presented on pages 7 through 11 were not directed to the claimed subject matter.

Claims 5 and 11:

Applicants stated on page 11, lines 6-15 that *"the Examiner has mischaracterized the meaning of the EOC channel. The EOC channel designated in claim 5 is a component of the SDSL frame ...This SDSL EOC comprises the monitoring data for the SDSL transmission line. In the case of an embedded ISDN service (directed at connected ISDN subscribers), EOC channel data are accommodated in this SDSL EOC channel (claim 5)." .* In response to Applicant argument, claim 5 (depends from base claim 4) does not specify the SDSL frame nor the *"the monitoring data for the SDSL transmission line. In the case of an embedded ISDN service"*. Claim 5 recites "depositing data for operational control of a connection to which at least one terminal equipment is connected in an operating eoc channel of said frame". Thus given the broadest reasonable claim interpretation, the ISDN embedded eoc of Bartholomew reads on the claimed eoc channel since it serves control information for the ISDN services. See Bartholomew, column 14, lines 16-31, column 15, lines 59-67. With regard to claim 11, Applicants have stated in the argument that *"To differentiate between the individual services, the service-specific EOC channel data are characterized in the SDSL EOC channel"*. However the claimed subject matter is not as

such, claim 11 recites: "allocating bits for operational control to an operating eoc channel, and addressing said bits for operational control via a sub-address in a message format of said operating channel". Bartholomew discloses the EOC channel is used for synchronization, maintenance and testing purposes. See column 9, lines 3-20. Therefore, given the broadest reasonable interpretation of claim limitations, the synchronization, maintenance and testing purposes of the EOC of Bartholomew are regarded as the claimed eoc operating channel as in claim 11.

Referring to Tzannes et al, US (6,522,666). Tzannes is withdrawn from consideration as prior art in accordance with the MPEP §2136.03(II)(C).

Examiner believes that , given the broadest reasonable interpretation of claim limitations that Bartholomew the rejection is proper.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

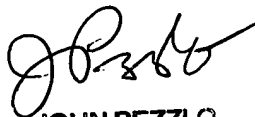
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AHMED ELALLAM whose telephone number is (571) 272-3097. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kizou Hassan can be reached on (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AHMED ELALLAM
Examiner
Art Unit 2662
December 17, 2004


JOHN PEZZLO
PRIMARY EXAMINER